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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,408	08/31/2000	Jean-Charles Mercier	Q60439	5345

7590 01/10/2002

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[REDACTED] EXAMINER

GONZALEZ, JULIO C

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2834

DATE MAILED: 01/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/653,408	MERCIER ET AL.
	Examiner	Art Unit
	Julio C. Gonzalez	2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 November 2001.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-7 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant discloses in claim 1 that the rigid fairing constitutes the body of the generator.

According to figure 1, the generator does not touch all of the rigid fairing. Does the generator also touch the bottom part of the pod? How is it possible for the stator to form the whole pod? From figure 1, it seems like if the generator forms/constitutes only an upper, outer section of the rigid fairing.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Carter, Jr. et al.

Carter, Jr. et al discloses a wind-power generator pod 18 constituted by a rigid fairing (see figures 1 and 2) in which a generator 34 is disposed coupled to a propeller

14, wherein the rigid fairing of the pod is formed by the body of the generator in which a stator and rotor are mounted. Also, the generator 34 is coupled to a gearbox 36.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carter, Jr. et al in view of Hirose.

Carter, Jr. et al discloses a wind-power generator pod 18 constituted by a rigid fairing (see figures 1 and 2) in which a generator 34 is disposed coupled to a propeller 14, wherein the rigid fairing of the pod is formed by the body of the generator in which a stator and rotor are mounted. Also, the generator 34 is coupled to a gearbox 36. However, Carter, Jr. et al does not disclose lateral opening on the stator.

On the other hand, Hirose discloses for the purpose of cooling efficiently a generator that the generator disposes lateral openings right through the stator (see abstract and claim 1).

It would have been obvious to one having ordinary skill in the art to design a pod, a rigid fairing with propellers and a generator as disclosed by Carter, Jr. et al and to make lateral opening in the stator for the purpose of cooling efficiently a generator as disclosed by Hirose.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carter, Jr. et al in view of Benoit.

Carter, Jr. et al discloses a wind-power generator pod 18 constituted by a rigid fairing (see figures 1 and 2) in which a generator 34 is disposed coupled to a propeller 14, wherein the rigid fairing of the pod is formed by the body of the generator in which a stator and rotor are mounted. Also, the generator 34 is coupled to a gearbox 36. However, Carter, Jr. et al does not disclose a tubular sleeve around the pod.

On the other hand Benoit discloses for the purpose of taking advantage of high wind speeds thus improving efficiency of the wind power generator that the pod 58 is surrounded by a tubular sleeve forming an annular air passage along the pod (see figures 2 and 3).

It would have been obvious to one having ordinary skill in the art to design a pod, a rigid fairing with propellers and a generator as disclosed by Carter, Jr. et al and to make a tubular sleeve surround the pod for the purpose of taking advantage of high wind speeds thus improving efficiency of the wind power generator as disclosed by Benoit.

#### ***Response to Arguments***

8. Applicant's arguments filed 11/06/01 have been fully considered but they are not persuasive.

According to the Merriam-Webster's Collegiate Dictionary, constitute means make-up, form, and compose. Applicant's claim 1 recites a rigid fairing of the pod constitutes (forms) the body of the generator.

From applicant's figure 1, it seems like if an upper, outer section of the rigid fairing functions as a cover for the generator and NOT the whole rigid fairing as could be interpreted from claim 1. To constitute, or be a part of another structure or link or integrally connect one structure to another is not clearly defined in the claims. For example, a wheel constitutes a body of car; the limitation is very broad since it does not say how or in what manner the wheel forms part of a body since it could be any wheel or even the spare wheel, since the limitations does not say how the wheel is connected to the body.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., pod been made of magnetic steel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

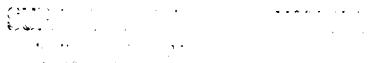
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio C. Gonzalez whose telephone number is (703) 305-1563. The examiner can normally be reached on M-F (8AM-5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on (703) 308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 305-1341 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

RECEPTIONIST  
JULIO C. GONZALEZ  
(703) 308-0956

Jcg

January 2, 2002